

Hearing is

☐ Hearing is Set:

Date: Friday, June 25, 2021

Time: 1:30 pm

Judge/Calendar: Judge Sharonda Amamilo

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

In the Matter of:

A CHALLENGE TO THE BALLOT TITLE
OF INITIATIVE No. 1377, AN INITIATIVE
TO THE LEGISLATURE

No. 21-2-01020-34

OPENING BRIEF

Pursuant to RCW 29A.72.080 petitioner Tim Eyman ("Petitioner"), hereby appeals the Ballot Title issued by the Attorney General of Washington for Initiative Measure No. 1377, An Initiative to the Legislature.

I. PARTIES

1. Petitioner is a citizen of, and a registered voter in, the State of Washington.
2. Pursuant to RCW 29A.72.080, notice of this Petition is served upon the Secretary of State of the State of Washington and the Attorney General of the State of Washington.

II. JURISDICTION

3. This court has jurisdiction over this appeal pursuant to RCW 29A.72.080.

III. STANDARD FOR REVIEW

4. Anytime anyone is dissatisfied with the Ballot Title written by the Attorney General for an

initiative, that person may file a challenge in Thurston County Superior Court under RCW 29A.72.080. Within five days, there shall be a special statutory proceeding to contest the ballot title and the Court shall apply the statutory standard to the ballot title. The standard of review is *de novo*, meaning the court will look with fresh eyes at the initiative and determine and assign a neutral ballot title. In no way should the Attorney General's version be given any weight or deference given this *de novo* standard.

IV. THE INITIATIVE

5. A copy of the text of Initiative Measure No. 1377 and the Attorney General's proposed Ballot Title and Ballot Summary are attached hereto as Exhibits A and B, respectively.

V. CONCISE DESCRIPTION ASSIGNED BY THE ATTORNEY GENERAL

6. On May 28, 2021, the Attorney General assigned the following Ballot Title – Statement of Subject and Concise Description – to Initiative Measure No. 1377:

Initiative Measure No. 1377 concerns prohibiting cap-and-tax schemes. This measure would prohibit state agencies, counties, and cities from imposing any “cap-and-tax scheme” unless required by uniform federal law, and repeal certain laws creating a “cap-and-invest program” to limit greenhouse-gas emissions.

VI. ALTERNATIVE STATEMENT OF SUBJECT AND CONCISE DESCRIPTION PROPOSED BY PETITIONER

7. Petitioner provides the Court with this alternative Statement of Subject and Concise Description for Initiative 1377:

Initiative Measure No. 1377 concerns prohibiting cap and tax schemes by state agencies, counties, cities. This measure would prohibit state agencies, counties, and cities from imposing any cap and tax scheme unless a uniform federal standard is required, and repeal legislation enacted in 2021 imposing such a scheme.

VII. ARGUMENT

RECENTLY, IN *GARFIELD COUNTY ET AL v STATE OF WASHINGTON*, THE SUPREME COURT FOUND THE ATTORNEY GENERAL'S BALLOT TITLE FOR INITIATIVE 976 "MISLEADING AND DECEPTIVE" ("We hold

that the initiative violates the subject-in-title rule because it is deceptive and misleading ...").

DESPITE BEING RESPONSIBLE FOR DEFENDING THE INITIATIVE, FOLLOWING THE DECISION, THE ATTORNEY GENERAL CELEBRATED THE RULING (<https://shiftwa.org/democrat-ag-bob-ferguson-celebrates-losing-the-30-car-tab-lawsuit>). FOLLOWING THE RULING IN *STATE OF WASHINGTON V TIM EYMAN*, THIS ATTORNEY GENERAL FUNDRAISED OFF IT. IN LIGHT OF THESE FACTS, THIS COURT MUST BE EXTRA VIGILANT IN EVALUATING BALLOT TITLES ISSUED BY THIS ATTORNEY GENERAL FOR

INITIATIVES SPONSORED BY THIS PETITIONER

8. The animus between this Attorney General and Petitioner is well-known and well-documented. In light of *Garfield County et al v State of Washington* (#98320-8) and *State of Washington v Tim Eyman* (#17-2-01546-34), this Court must guard against allowing this animus to result in the Attorney General drafting ballot titles for initiatives sponsored by Petitioner that are intentionally or unconsciously sabotaged.

THE ATTORNEY GENERAL'S LONGSTANDING POLICY HAS BEEN "THE BEST PRACTICE IS SIMPLY TO USE THE SAME PHRASING THAT THE INITIATIVE ITSELF ADOPTS"

8. In the legal challenge to the Attorney General's ballot title for Initiative 1525 (Case #16-2-001480-34), the Deputy Solicitor General filed his legal brief on April 22, 2016. Here are excerpts from the Attorney General's brief (references to "Petitioner" were initiative opponents that were challenging the Attorney General's ballot title:

"It is important to note that section 13 of the initiative is unclear as to whether it refers to new vehicles or to new taxes. A ballot title is not the forum for resolving unclear initiatives, and so the best practice is simply to use the same phrasing that the initiative itself adopts. ... the concise description covers the point and Petitioners' argument lacks merit."

Petitioner believes that the Attorney General's legal argument years ago are still valid, preferred, and operative and should be considered by the Court in support of the Petitioner's proposed alternative.

The proposed alternative matches language within the initiative itself and provides much more information to the average voter.

- * The words cap and tax scheme is used throughout the initiative and is not hyphenated. Petitioner's alternative does not hyphenate them.
- * The words cap and tax scheme is used throughout the initiative and there are not quotation marks used. Hyphenation implies the term is defined and it is not in the measure. For Initiative Measure No. 1631 in 2018, the term – pollution fees – was actually defined in the measure and still, the Attorney General did not put that term in quotation marks. For Initiative Measure No. 1639 in 2018, the term – semiautomatic assault rifles – was actually defined in the measure and still, the Attorney General did not put that term in quotation marks.
- * The words – unless a uniform federal standard is required – is used throughout the initiative and the Concise Description should use that same wording, and not the Attorney General's truncated version.
- * Petitioner's version includes more information to the voter – while the Attorney General uses the words "recently enacted", the Petitioner's version uses "enacted in 2021" which is better.
- * Section 11 of the measure reads "The following acts or parts of acts impose a costly and regressive cap and tax scheme not required in all 50 states and so are each repealed." Petitioner's version focuses on the neutral words "and repeal legislation". Then it informs the voters that the repealed legislation was "enacted in 2021". And then it uses the neutral wording "imposing such a scheme." The Attorney General's version uses value-laden terms to describe the legislation being repealed (legislation this particular AG supports). As explained by the Attorney General in previous legal briefs, their policy is "the best practice is simply to use the same phrasing that the initiative itself adopts." The Attorney

General's office, over the past eight years, has employed this common sense policy for any initiative this particular AG supports, but they stray from this policy when it's an initiative he opposes. There should be one standard whether Bob Ferguson likes the initiative or not.

9. Petitioner believes that this alternative is superior to the Attorney General's version and is more informative and more in compliance with RCW 29A.72.050. It is imperative that this court order the initiative's ballot title to describe its essential elements within the word limit. The Petitioner asks the court to ensure that this requirement is met with the ballot title for Initiative Measure No. 1377.


V. RELIEF REQUESTED

Petitioner respectfully requests that this court grant the following relief:

(A) that the court, pursuant to RCW 29A.72.080, file with the Secretary of State a certified copy of the Ballot Title meeting the above objections, in the amended form recommended in this petition; and

(B) such other legal and equitable relief as this court deems just.

Respectfully submitted this 10th day of June, 2021.



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